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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,010	06/11/2004	Carol Pierce	04-0043	4009
30550	7590	10/31/2005	EXAMINER	
BILL & MARY LOU INC. 101 LOMBARD STREET #510 W SAN FRANCISCO, CA 94111			BASICHAS, ALFRED	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/710,010	Applicant(s) PIERCE, CAROL	
	Examiner Alfred Basichas	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Umfleet (5,989,012), which shows all of the claimed limitations. Umfleet shows a method of repositioning a candle wick as claimed. While some limitations are not specifically recited, they are inherent. For example, grasping the fixing device, as well as lowering and raising the fixing device.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nunemaker (3,985,492), which discloses substantially all of the claimed limitations including, among other things, a candlewick straightening device and flame snuffer including, among other things, means candlewick 12, means for extinguishing a candle flame 11, and means for supporting the device and snuffer such that the repositioning means and the extinguishing means are elevated above the support surface (see at least fig. 4). Although Nunemaker does recite a size it does not specifically recite the claimed size of one quarter inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed size into the invention disclosed by Nunemaker, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable values or ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Swain*, 156 F.2d 239.

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nunemaker (3,985,492) in view of Schroeder (1,572,316). Nunemaker discloses substantially all of the claimed limitations, including the device being made of the

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claimed materials (see at least col. 4, lines 13-20), but does not specifically recite the snuffer rotatably mounted. Schroeder teaches a snuffer rotatably mounted via hinge member 9. While Schroeder does not specifically recite the purpose of the hinge, it is well within the knowledge of one having ordinary skill in the art that such would permit for convenience in utilizing the apparatus regardless of the height of the wick in relation to the user. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the rotatable snuffer as taught by Schroeder into the invention disclosed by Nunemaker, so as to provide for convenience of use regardless of the height of the wick in relation to the user.

Response to Arguments

7. Applicant's arguments with respect to the claim have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 872-93066.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

October 22, 2005


Alfred Basichas
Primary Examiner